

## The SRBA Millennium Roller Coaster Year



1. **10/1/99 - Wilderness Decision** – The Idaho Supreme Court held that after the creation of the reservation in the Frank Church River of No Return, the Gospel-Hump, and the Selway-Bitterroot Wilderness Areas the United States Forest Service has a federal reserved right to all unappropriated water from the Snake River and its tributaries within the boundaries of, or upstream from, the reservations. The decision was authored by Justice Silak. As a result of the decision, IDWR issued a Moratorium on 10/25/00 halting development of water rights in these areas. *Potlatch v. United States, In re SRBA*, 1999 WL 778325 (Idaho).

Citizens, legislators and other public servants, including the governor were highly critical of this decision. There were newspaper articles throughout the state and petitions in local gas stations asking for reconsideration. The Idaho Supreme Court granted reconsideration and reheard arguments on 2/14/00. Currently waiting for the Court's decision.

2. **10/1/99 - MUSYA Decision** – The Idaho Supreme Court held that the Multiple-Use Sustained-Yield Act (MUSYA) did not intend to establish a federal reserved water right and was only intended to expand the purposes for which the national forests are administered. This decision resulted from an appeal from an SRBA Court order denying summary judgment to the United States for federal reserved water rights based on MUSYA (1960). *United States v. Challis*, 133 Idaho 525, 988 P.2d 1199 (1999).
3. **11/10/99 - Nez Perce decision** – The SRBA District Court held that the Nez Perce tribe did not have reserved water rights off the reservation for preserving fish runs. The Nez Perce Tribe asked for reconsideration and the SRBA District Court affirmed the earlier decision. [www.srba.state.id.us](http://www.srba.state.id.us) under *Presiding Judge Documents*.
4. **11/16/99 – Appeal to Idaho Supreme Court filed** - Nez Perce filed an appeal to the Supreme Court seeking reversal of the SRBA District Court's ruling on the off-reservation rights. The appeal was granted and is pending before Supreme Court.
5. **12/29/99 – SRBA Court issued “Facility Volume” Opinion** – Dicta in this opinion said a water right is tolled for a finding of forfeiture once a claim is filed in the SRBA until after the issuance of the decree. This opinion can be found at [www.srba.state.id.us](http://www.srba.state.id.us) under *Presiding Judge Documents*.
6. **12/30/99 – IDWR Filed its Conjunctive Management Report** explaining the basis for conjunctive management general provisions for surface and ground water. The court designated SRBA Basin Wide Issue 5 to address the necessity for a conjunctive management general provision and the actual language used for the conjunctive management general provision. Some attorneys involved in the SRBA have called conjunctive management one of the most important issues in the SRBA. The report can be found at [www.idwr.state.id.us](http://www.idwr.state.id.us) under *Snake River Basin Adjudication*.

7. **2/7/00 – Motion to Disqualify** – The Nez Perce tribe filed Motions to Disqualify Judge Wood because he and his family have water rights within the jurisdiction of the SRBA. The motions also asked that some of Judge Wood's decisions be set aside. Judge Wood issued a disclosure statement of his water rights on 2/11/00. The Court denied the motion to disqualify on July 14, 2000. [www.srba.state.id.us](http://www.srba.state.id.us) under **Presiding Judge Documents**.
8. **3/9/00 - Smith Springs decision** – The Idaho Supreme Court unanimously held that a point of diversion is necessary to claim a water right. Thus, the federal government could not use a state-based beneficial use appropriation method to claim a water right without a point of diversion for any right other than a stockwater right. This decision reversed the SRBA District Court's decision. *Minidoka Nat'l Wildlife Refuge v. United States*, 134 Idaho 106, 996 P.2d. 806 (2000).
9. **3/17/00 & 5/4/00 Court Tours Basin 34 and 57** – The Court requested that IDWR conduct a tour of these two unique basins to educate the court on relevant issues. All parties were provided notice and the Court, several area water right owners and lawyers viewed key areas of these basins with IDWR. See [www.idwr.state.id.us](http://www.idwr.state.id.us) under **Snake River Basin Adjudication** for IDWR's virtual presentation.
10. **4/25/00 – LU Ranching decision** – The SRBA Court found that an issue remained on whether privately owned stockwater rights are appurtenant to the federal public land that make up the federal grazing allotment. The Court remanded the case back to the special master to analyze the chain of title to the land to determine the grantor's intent when transferring the property. Trial is set for these cases on 2/21/01. This decision can be found at [www.srba.state.id.us](http://www.srba.state.id.us) under **Presiding Judge Documents**.
11. **5/23/00 – Election for Supreme Court Justice** - Ada County District Court Judge Daniel Eismann ran a heated campaign in an effort to unseat Supreme Court Justice Cathy Silak. Eismann publicly criticized the Supreme Court's Wilderness decision (written by Justice Silak) and campaigned to protect Idaho's water. Eismann won the election by a large margin. Eismann will begin his term January 2001.
12. **8/16/00 – Conjunctive Management Mediation** – IDWR filed its second report explaining implementation of conjunctive management. The District Court ordered formal mediation for Basin Wide Issue 5 (Conjunctive Management). A stipulation is in process of being finalized with rulemaking to follow. The Second Report can be found at [www.idwr.state.id.us](http://www.idwr.state.id.us) under **Snake River Basin Adjudication**.
13. **8/18/00 – Judge Wood Granted Nez Perce Permissive Appeal** on motion to disqualify him as the presiding judge over the SRBA.
14. **8/00 – Supreme Court Justice-elect Eismann Sought Advisory Opinion from the Idaho Judicial Council** on whether he should be disqualified from hearing SRBA matters because his brother-in-law is the District Court judge assigned to the SRBA. The Idaho Judicial Council said because of his close relationship with Judge Wood that Justice-elect Eismann should recuse himself from hearing appeals from the SRBA. Eismann immediately issued a press release stating that he will recuse himself from SRBA appeals.

- 15. 8/30/00 – Judge Wood was Asked to Resign** – The Idaho Supreme Court Justices voted three to two that Judge Wood should be dismissed from the SRBA based on his family relationship with Justice-elect Eismann. The Supreme Court asked Judge Wood to resign from the SRBA but he refused. The Supreme Court terminated Judge Wood's appointment to the SRBA.
- 16. 9/6/00 - Sagewillow decision** – Idaho's Supreme Court held that an appeal of an administrative transfer is within the exclusive jurisdiction of the SRBA, because the water is tributary to the Snake River, despite the fact that it was an administrative appeal and the Administrative Procedures Act provides otherwise. All parties have asked the court for reconsideration of this opinion. A copy of the opinion in *Sagewillow Inc. v. Idaho Dep't of Water Resources* can be found at [www2.state.id.us/judicial/opinions/sagewil.pdf](http://www2.state.id.us/judicial/opinions/sagewil.pdf)
- 17. 9/00 – SRBA Court Travels Throughout the State** – In an effort to educate the public about the SRBA, the court holds its monthly informational meetings and status conferences at many different locations throughout the state. This effort has occurred for the past year and has been well received by the water users.
- 18. 11/00 – First Basin to be Completed** – An SRBA milestone. All active cases are resolved in Basin 71. The Court plans to issue final decrees for all claims and “close out” Basin 71.
- 19.** As we sit today there is no Judge assigned to the SRBA.

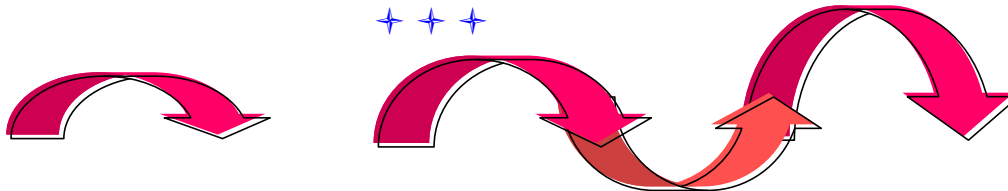


### **We are left with some unanswered questions:**

- What will the Supreme Court's decision be regarding the unappropriated waters in the wilderness areas?
- Will the Supreme Court's decision in Sagewillow result in Idaho having its own water court?
- Can a judge with any interest in a water right, even a de minimis interest, preside over the SRBA?
- Who will be the next SRBA Judge?

**With these questions still pending,  
the year 2001 will surely prove to be as interesting as the year 2000.**

**Yet, the SRBA is moving toward completion.**



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